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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,920	11/14/2003	Evert de Boer	85773-277C	7649
7590 02/18/2005				
SMART & BIGGAR Suite 3400 1000 de la Gauchetiere Street West Montreal, QC H3B 4W5 CANADA		EXAMINER TON, DANG T		
		ART UNIT 2666		PAPER NUMBER

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,920	Applicant(s) DE BOER ET AL.	
	Examiner DANG T TON	Art Unit 2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The disclosure is objected to because of the following informalities:

Applicant should provide a status of the copending application serial number 09/273,772 recited in page 1 of the specification.

Appropriate correction is required.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

3. The abstract of the disclosure is objected to because the term " said " should be voided from the abstract. Correction is required. See MPEP § 608.01(b).

4. Claims 10-11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10 lines 2 and 7-8, " the second working path" has no antecedent basis. The same is true with the terms " the first working path " , " the second inter-gateway working segment " and

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" the first protection path " recited in claim 10 and " the first working path " , " the inter-gateway working segment " , and " the second protection path " recited in claim 11.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,658,013 in view of Sandesara (5,179,548).

For claims 1 and 3-21, the claims 1-8 of the patent number 6,658,013 disclose a method/system comprising:

designating one common network element as a primary

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gateway node and another common network element as a secondary gateway node;

at the primary gateway node, establishing a primary inter-ring connection for delivery of said service between the first and second rings;

and at the secondary gateway node, monitoring the status of the primary gateway node and establishing a new inter-ring connection for delivery of said service upon failure of the primary gateway node.

wherein at least one ring is a two-fiber bi-directional line-switched ring.

wherein at least one ring is a four-fiber bi-directional line-switched ring.

wherein the first ring is a two-fiber bi-directional line-switched ring and the second ring is a four-fiber bi-directional line-switched ring.

wherein adjacent network elements in the first ring are connected by a first working path and by a first protection path;

wherein adjacent network elements in the second ring are connected by a second working path and by a second protection path; wherein the primary inter-ring connection is established between the working path of the first ring and the working path of the second ring;

and wherein the new inter-ring connection is established between the protection path of the first ring and the protection path of the second ring.

wherein adjacent network elements in the first ring are connected by a first working path and by a first protection path;

wherein adjacent network elements in the second ring are connected by a second working path and by a second protection path;

wherein the primary inter-ring connection is established between the working path of the first ring and the working path of the second ring;

and wherein the new inter-ring connection is established between the working path of the first ring and the protection path of the second ring.

wherein adjacent network elements in the first ring are connected by a first working path defining a first inter-gateway working segment between the primary and secondary gateway nodes and by a first protection path;.

wherein adjacent network elements in the second ring are connected by a second working path defining a second inter-gateway working segment between the primary and secondary gateway nodes and by a second protection path;

wherein the primary inter-ring connection is established between the working path of the first ring and the second inter-gateway working segment;

and wherein the new inter-ring connection is established between the protection path of the first ring and the working path of the second ring.

wherein adjacent network elements in the first ring are connected by a first working path defining a first inter-gateway working segment between the primary and secondary gateway nodes and by a first protection path;

wherein adjacent network elements in the second ring are connected by a second working path defining a second inter-gateway working segment between the primary and secondary gateway nodes and by a second protection path;

wherein the primary inter-ring connection is established between the first inter-gateway working segment and the working path of the second ring;

and wherein the new inter-ring connection is established between the working path of the first ring and the protection path of the second ring. (NOTE see claims 1-8 of the patent).

For claims 1 and 3-21, the claims 1-8 of the patent disclose all the subject matter of the claimed invention with the exception maintaining non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network. Sandesara from the same or similar fields of endeavor teaches a provision of bi-directional rings being employed a loop back technique and two additional protection transmission links which remain unused under normal operations. Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use maintaining non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network as taught by Sandesara in the communications network of the clams 1-8 of the patent.

The non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a

communications network as taught by Sandesara can be implemented/modified into the system of claims 1-8 of the patent since it does teaches back up rings when it is failed.

Using maintaining non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network as taught by Sandesara into the system of the claims 1-8 of the patent being that it provides the system more reliable since it can have a back up ring when failed.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-15 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandesara in view of Yamasaki et al. (5,909,175).

For claims 1 and 3-15 and 20-23, Sandesara disclose a self healing bi-directional logical ring network comprising :

a switching entity operative to provide controllable consumption of inter-ring bandwidth between the first and second rings (see column 4 lines 17-21):

the control entity being responsive to observation of a non-failure status of the remote gateway to maintain non-consumption of inter-ring bandwidth by the switching entity (see column 2 lines 51-63);

the control entity being responsive to occurrence of a failure of the remote gateway to cause consumption of inter-ring bandwidth by the switching entity for delivery of the

communications service between the first and second rings (see column 2 lines 51-63);

wherein the control entity causing consumption of inter-ring bandwidth by the switching entity comprises the control entity establishing a new inter-ring connection between the first and second rings (see column 2 lines 60-63); and

wherein adjacent network elements in the first ring are connected by a first working path and by a first protection path; herein adjacent network elements in the second ring are connected by a second working path and by a second protection path;

wherein when, prior to failure, the remote gateway delivers the communications service between the working path of the first ring and the working path of the second ring, the new inter-ring connection connects the protection path of the first ring to the protection path of the second ring (see column 2 lines 51-63).

For claims 1, 3-15, and 20-23, Sandesara discloses all the subject matter of the claimed invention with the exception of monitoring a status of a remote gateway in a communications network. Yamasaki et al. from the same or similar fields of endeavor teaches a provision of monitoring the alarm of the data which flows on the currently used passage or the preliminary passage to connect the first ring and second ring with each

other(see column 2 lines 54-59). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use monitoring a status of a remote gateway in a communications network as taught by Yamasaki et al. in the communications network of Sandesara.

The monitoring the status of the remote gateway can be implemented/modified into the network of Sandesara reference since it does teach the cross connect switches. The motivation for using monitoring the status of the remote gateway as taught by Yamasaki et al. in the communications network of Sandesara being that it provides the system more liable since it detects failure of the rings and provide a backup ring to the system.

8. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandesara in view of Yamasaki et al. as applied to claim 1 above, and further in view of Nathan et al. (6,295,146).

For claims 16-19, Sandesara and Yamasaki et al. disclose all the subject matter of the claimed invention with the exception of using optical in a communications network. Nathan et al. from the same or similar fields of endeavor teaches a provision of the optical lines (see column 2 lines 21-22). Thus, it would have been obvious to the person of ordinary skill in

the art at the time of the invention to use the optical in a communications network of Sandesara and Yamasaki et al.

The optical lines can be implemented/modified into the network of Sandesara reference by replacing the transmission lines of Sandesara with the optical lines. The motivation for using optical as taught by Nathan et al. in the communications network of Sandesara and Yamasaki et al. being that it provides more efficient use of the optical channels.

9. Sandesara (5,327,427) and Okanou (5,623,482) are all cited to show systems which are considered pertinent to the claimed invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANG T TON whose telephone number is 571-272-3171. The examiner can normally be reached on MON-WED, 5:30 AM-6:00 PM and Thur 5:30-9:30 A.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Ton



DANGTON
PRIMARY EXAMINER